

[MISC. PUBS.]

MEMORANDUM

WITH RESPECT TO PROPOSED LEGISLATION
WHICH WOULD

SEVER and DISJOIN

THE

FIFTH WARD, BOROUGH OF QUEENS

FROM

THE CITY OF NEW YORK

AND ERECT SAID FIFTH WARD INTO
A NEW CITY, TO BE KNOWN AS

ROCKAWAY CITY

SUBMITTED TO

Hon. WILLIAM A. PRENDERGAST
COMPTROLLER OF THE CITY OF NEW YORK

BY

CHIEF ACCOUNTANT, DEPARTMENT OF FINANCE

MARCH 31, 1915

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THE CITY OF NEW YORK—DEPARTMENT OF
FINANCE.

DIVISION OF CHIEF ACCOUNTANT.

MARCH 31, 1915.

Hon. WILLIAM A. PRENDERGAST,

Comptroller.

DEAR SIR—In accordance with your directions I have made an examination of and beg to submit the following memorandum with respect to Assembly Bill 1392, 1645, which has for its purpose the lopping off of the Fifth Ward, Borough of Queens, from the present City of New York and erecting said Fifth Ward into a new city, to be known as Rockaway City.

Yours respectfully,

DUNCAN MACINNES,

Chief Accountant.

RE ROCKAWAY CITY BILL.

QUESTIONABLE LEGALITY OF LEGISLATURE GRANTING SECESSION TO ANY PART OF NEW YORK CITY:

The question of whether the former City of Brooklyn and the former municipalities in the County of Queens and also those in Richmond, would become consolidated with and become a part of the Greater City of New York was submitted to the people at a general election, and it was only because a majority of the voters decided in the affirmative upon the creation of the Greater City that the Charter bringing it into legal existence was passed.

The financial confusion and danger to the City of New York and the probable effect upon its credit which may result from irresponsible legislative attempts to partition the City by creating new cities from within its corporate limits is fraught with such far-reaching possibilities that the legality of this legislative procedure should be sharply challenged with a view to preventing raids of a like kind being made at any time from any other quarter or part of the Greater City, where some local dissatisfaction either with the administration of their own part of a Borough or with some official may exist.

If the feeling is to go abroad that at any time any part of the City—large or small—may get a complaisant Legislature to listen to appeals for secession which may only reflect the desire of certain dissatisfied people or ambitious legislators, and that such secession may be granted, the feeling thus created may lead to a fear on the part of investors in New York City bonds that they may wake some day to find that the taxable values upon which both payment of interest and redemption of principal of their securities are based have waned materially, and that they may be called upon to institute proceedings to assure the integrity of the income from their holdings in City bonds.

It does not require much looking ahead to see that if such a fear should enter into the minds of dealers and investors in New York City securities the market for such would likely be seriously impaired and the City's credit would consequently suffer. It would not require any

wild stretch of the imagination to assume that if the people of the Fifth Ward of the Borough of Queens succeed in their secession movement any other part of the Greater City may also successfully raise the banner of secession, and great financial confusion and fear with respect to the validity and integrity of the City's debt would undoubtedly result.

Article I, Section X of the Constitution of the United States provides in part that—

“ No State shall pass a law impairing the obligation of contracts.”

The bonded indebtedness of the City of New York is secured upon the assessed valuation of taxable real estate situate within the whole City, and to allow any part of the City to secede and withdraw from its contractual obligation would be to seriously affect the security of the City's debt. Any such secession statute by the Legislature would seemingly be unconstitutional, because it would be in effect a law impairing the obligation of contracts.

NEW ROCKAWAY CITY: PP. 2/3

The bill would take away from the City of New York the Fifth Ward, Borough of Queens, or that part of the Borough of Queens which formerly constituted the Villages of Far Rockaway, Arverne and Rockaway Beach. This territory, with the land under water, would be excluded and taken away from the present City and a new city erected, to be named Rockaway City.

The bill provides that the new city is to come into existence on July 1, 1915 (Sec. 406, p. 156).

APPORTIONMENT OF DEBT: PP. 6/7:

Rockaway City shall be liable for its proportion of the debts, demands and claims existing against the City of New York at the time when the government proposed in this Act shall go into effect. Such debts, etc., to be ascertained and adjusted as provided in the proposed Act.

The Mayor and the Municipal Assembly, representing the City of New York, or a commission not exceeding five members to be appointed by the Mayor, with the approval of the Municipal Assembly, to represent the City of New York, and the City Council

of Rockaway City or a commission of five members appointed by the City Council of Rockaway City to constitute a Board of Auditors whose duty it shall be, within 90 days, to ascertain and audit all debts, claims, and demands against the City of New York, including outstanding bonds, and adjust the amount thereof to be paid by Rockaway City and by the City of New York respectively in proportion to the respective valuation of said City of New York and Rockaway City, to be ascertained from the last assessment roll of the City of New York made prior to the passage of the proposed Act.

REMARKS RE APPORTIONMENT OF DEBT: PP. 6/7:

The debt of the City of New York, consisting of claims as adjusted, judgments which may be obtained, awards for property, etc., could not at any time be fully determined within 90 days. There are condemnation proceedings always in progress which sometimes take months before the amounts of the awards are finally determined, and consequently this clause in the proposed Act, whereby the debt which would require to be assumed by the new city is to be ascertained and determined, could not be fully carried into effect within 90 days.

SUPREME COURT TO DETERMINE THE EQUITABLE PROPORTION OF DEBT TO BE BORNE BY EACH CITY, P. 9:

The new bill provides that in the event of the inability of the Board of Auditors to agree, within 90 days, upon the division of the debts, the Supreme Court in the Second Judicial District would be empowered to divide the same between the two cities and to ascertain and award to each its equitable proportion thereof, to be determined according to the relative assessed valuation of real and personal property remaining within the new Rockaway City and the City of New York.

REMARKS RE SUPREME COURT TO DETERMINE THE EQUITABLE PROPORTION OF DEBT TO BE BORNE BY EACH CITY: P. 9:

This part of the law would make it appear that the basis for dividing the debt to be assumed by each one of the two municipalities would be the relative assessed valuation of the real and personal property of Rockaway City and of New York City. It is very important that the bill, if there is any likelihood of its passing, should be amended in this respect and that the basis of division should be the relative assessed valuation of all real estate subject to taxation.

BOARD OF AUDIT, PP. 3/7:

The Board of Auditors, representing the City of New York and the proposed new Rockaway City, is to make a statement, in triplicate, showing the amount of said total indebtedness and the items thereof and the apportioned amount thereof, and each item to be paid by said Rockaway City and said City of New York respectively. The debt of the proposed new Rockaway City and of the City of New York so adjusted to be paid in the proportion so adjusted the same as other debts existing against the proposed new Rockaway City and the City of New York respectively.

REMARKS RE-BOARD OF AUDIT, PP. 3/7:

The partition of the City of New York which this bill would carry into effect and the consequent adjustment of the debt which would follow would include, among other things, the adjustment of the funded debt. The latter would in all likelihood prove a very difficult task because it is not reasonable to assume that any holder of a New York City bond would surrender such so that he could be furnished with a new issue whereby only a proportion of his holdings would be represented in bonds of the City of New York and a proportion by bonds of the new Rockaway City.

WHAT OF BOND HOLDER WHO WOULD REFUSE TO EXCHANGE A NEW YORK CITY BOND FOR A ROCKAWAY CITY BOND?

Holders of New York City bonds could refuse to surrender them, and it does not seem that any statute could be legally enacted by which holders of New York City bonds could be compelled to surrender them and be required to accept bonds of another city in lieu of a certain share or proportion of the original New York City bonds.

The bill by which the new Rockaway City would be created provides that the Board of Auditors representing the City of New York and the proposed Rockaway City shall prepare a statement showing the amount of the total indebtedness and the items thereof, and the apportioned amount and the items to be paid by Rockaway City and by the City of New York respectively. This is merely a jingle of words, as it would be practically impossible to adjust the indebtedness between the two municipalities by items. The adjustment would require to be upon some agreed proportion. It could not be determined according to items.

To illustrate: The total amount of one contract, although it might be equal to a stated proportion of the entire contract debt, could not be set aside as that item or part of the contract debt which was to be assumed by Rockaway City, nor could any particular numbered bonds of some particular issues be set aside as items of the debt to be accepted and borne by the new Rockaway City even though in their aggregate such bonds might represent the stated proportion of the funded debt which the new City of Rockaway was to assume. It will therefore be seen that the adjustment of the debt as between the City of New York and the proposed new city could not in any instance be based upon items to be placed upon the City of New York or upon Rockaway City respectively.

The creditor of the City of New York, whether he be bond holder or contractor, would consider it was no concern of his as to how the debt between the two municipalities was to be adjusted. His debtor is the City of New York, and it is to the City of New York that the bond holder will look for his interest and for the ultimate redemption of his bond when it matures, and it is to the City of New York the contractor will look for payments on his contract as the work progresses, because it is with the City of New York his contract is made, and it is not reasonable to assume that either bond holder or contractor would willingly relieve the City of New York of any part of its liability to them and accept in lieu thereof the promise of Rockaway City to pay them bond interest or to liquidate their obligations of whatever kind, when they became due.

Nowhere in the Bill is there any provision for the raising of money or to provide for an issuance of bonds to pay a debt of Rockaway City to the City of New York, should such an unlooked for contingency arise; but, as will be shown hereinafter, there is little possibility that any such debt would be established against Rockaway City. Consequently there was apparently no need, in the minds of the framers, to provide for any specific method for liquidating such an improbable charge other than in the general language of the Bill that such would be "adjusted the same as other debts."

THE NEW CITY'S DEBT AND DEBT LIMIT:

The 1915 assessed valuation of taxable real estate in the Fifth Ward, Borough of Queens, is \$48,877,885. The total assessed valuation of taxable realty within the corporate limits of the Greater

City of New York (including the Fifth Ward, Borough of Queens) is \$8,108,764,237. The assessed valuation of the taxable real estate situate in the Fifth Ward, Borough of Queens, is approximately 6/10ths of one per centum of the grand total of the 1915 assessed valuation of all taxable realty within the City of New York.

On the basis of the present net bonded debt and the present contract liability Rockaway City would be required to assume a debt of approximately \$7,000,000, and the constitutional right of the new city to incur debt would be limited to \$4,887,788, or upwards of \$2,000,000 more than the debt which the new city would require to assume. The debt as thus approximated at \$7,000,000 would not include any budget appropriations of the year 1915. It would only include the new city's share of the net bonded debt and of the net contract liability as approximated on February 28, 1915.

EFFECT UPON CITY'S DEBT AND UPON CITY'S DEBT LIMIT:

If the City of New York was to be dismembered to the extent outlined by the bill seeking to create the new Rockaway City taxable realty values aggregating \$48,877,885 would be taken away from the total real estate assessed valuation of the City of New York for the year 1915. This in turn would mean that the City's constitutional right to incur debt would be decreased by \$4,887,788; that is, the margin within the debt limit of \$56,792,917 as of January 2, 1915, would be decreased to \$51,905,129, and the \$19,157,312 of unreserved margin which at that date was available for further authorization would be decreased to \$14,269,524.

While this decrease of the City's constitutional debt-incurring power would result when the bill went into effect on July 1, 1915, and the new Rockaway City was created, it does not seem that the debt of the City of New York would be any less, because any apportionment of the debt which, as a result of the act, would be placed upon Rockaway City, could be thus placed only for the purpose of a settlement as between the two cities. As already stated, it does not seem clear how any part of the bonded debt of the City of New York could be shifted, so far as the bond holders are concerned, from the city issuing the bond to another city. The bond holders, it would seem, would always look to the City of New York for payment of their bonds, and the responsibility would not rest upon them to deter-

mine how the City of New York was to collect that part of the debt which would require to be assumed by the new city. The same logic would also apply to contract liabilities. Consequently it would seem that the constitutional debt of the City of New York would not be lessened or decreased by the creation of the new Rockaway City, while the power of the City of New York to incur debt would be decreased to the extent of ten per cent. of the assessed valuation of all of the taxable realty within the Fifth Ward of the present Borough of Queens, which is the territory wherein the banner of secession has been raised.

As has already been pointed out herein, the indebtedness of the City of New York is secured upon the aggregate assessed valuation of all taxable real estate situate within the corporate limits of the whole City, and should any part of the City be allowed to secede and withdraw from its contractual obligations to meet its proportional share of the debt, the result would be to seriously affect the security of the City's outstanding debt and to impair its credit.

TITLE TO REAL AND PERSONAL PROPERTY OWNED BY THE CITY OF NEW YORK, PP. 8/9:

The Rockaway City bill provides that the title to the real and personal property belonging to the City of New York situate within the boundary of the proposed new city shall vest in said Rockaway City, and the title to real and personal property situate within the limits of said City of New York and title to all other real and personal property owned by the City of New York outside the limits of said city and not within the limits of the proposed Rockaway City, shall vest in the City of New York, and the value thereof shall be adjusted as hereinbefore provided, and the balance in adjustment and appraisal of realty and personalty shall be debited against the proposed Rockaway City or the City of New York, as the case may be, and shall be paid as any other debts upon the day when the government provided in the proposed act goes into effect.

ROCKAWAY CITY'S EQUITY IN THE APPRAISED VALUE OF ALL REAL AND PERSONAL PROPERTY NOW OWNED BY THE CITY OF NEW YORK WHEREVER SITUATE:

The foregoing is a very dangerous provision in the Bill.

It provides that the title to the real and personal property belonging to the City of New York situate within the boundary

of the proposed new Rockaway City shall vest in Rockaway City, and the title to the real and personal property owned by the City of New York situate within the limits of the City (outside of Rockaway City), and the real and personal property owned by the City of New York outside of the City limits, shall vest in the City of New York.

The Board of Audit, composed, it may be noted, of five members representing New York City and five members representing Rockaway City, are also to apportion in the same manner (according to relative assessed values of real and personal property) all securities, evidences of debt, property and effects as the same may be valued by it, between Rockaway City and the City of New York.

The value of the real and personal property (except such real property as is used for highway purposes) is to be ascertained and determined by appraisal. That is to say, the value of all real and personal property now owned by the City of New York situate within and situate without the corporate limits of the City is to be appraised, and the value as thus determined is to be adjusted between Rockaway City and the City of New York, as the case may be, and

“ * * * shall be paid as any other debts upon the day when the government provided for in this act goes into effect.”

that is to say, on the day when Rockaway City should be created.

The effect of this clause in the Rockaway City Bill, if enacted into law, would be that, assuming the basis of adjustment of debits and credits, to be in the neighborhood of say 6/10th of one per cent. of the debts to be charged to Rockaway City and 6/10ths of the appraised value of all City property to be credited to the new city, it would in all likelihood be found that Rockaway City would enter upon its career with several millions of dollars owing to it by the City of New York, to be paid upon the day when Rockaway City would be erected into a city.

A careful reading and thoughtful study of this particular provision in the Rockaway City Bill will show that the purpose of the framers was by this method to obtain a clean start in the beginning, free from all debt and with a large credit balance due to them by the City of New York upon which they could draw and thus relieve themselves of the need of levying any taxes for at least the first two or three years of their existence as a city. This clause in the bill would

give them an equity in certain property of the City of New York which was entirely paid for twenty years or more ago. It seeks to give them an equity and an interest in property which may have been deeded to the City of New York fifty years ago, and it may be, further back. It seeks to give them an equity in property which belonged to the former City of Brooklyn and the various municipalities in what is now known as the Borough of Brooklyn. In short, it seeks to give them an equity in the appraised value of real and personal property, which, in the aggregate, would in all likelihood be nearly twice as great as the net debt of the City of New York, and consequently, while the new Rockaway City would bear its proportion of the net debt, it is seeking to get as a credit a proportion of the appraised value of City property, towards the acquirement of which the property and property owners of Rockaway City never expended a dollar.

This clause in the bill means that the appraised value of the Croton watershed and water supply system; of the new Catskill Aqueduct and of all its supply mains and storage reservoirs; of Central Park, the Bronx Park, and Prospect Park; of the new Municipal Building; of the appraised value of the Manhattan-Bronx and Brooklyn-Manhattan subways, which have been in operation since 1904, and of the new subways which are building; of all the fire engine houses, police precinct stations; of all the school houses, colleges and libraries owned by the City—in short, the appraised value of all the property, real and personal, owned by the City, which would probably appraise at from one billion and a half to a billion seven hundred or eight hundred millions of dollars, would be apportioned between Rockaway City and the City of New York proportionally on the basis of the relative assessed valuation of taxable property within the corporate limits of the new Rockaway City and the assessed valuation of taxable property within the City of New York, as the latter would exist after its partial dismemberment by the erection of Rockaway City.

The effect of this, as I have already stated herein, would be in all likelihood to give the new Rockaway City such an equity in property values as to provide that:

The balance in adjustment and appraisal of realty and personalty would not be debited against Rockaway City but would be debited against the City of New York, and would

require to be paid by the latter named City upon the day when the new Rockaway City was created.

This would mean that the balance owing to Rockaway City of probably several millions would bear interest from July 1st, should the bill go into effect then, and as the new Rockaway City would receive nearly all of the taxes of 1915 payable in the Fifth Ward, Borough of Queens, on November 1, 1915 (second half of the 1915 tax), and would not require to continue in office, except as it preferred, any officer, fireman, policeman or other employee of the City of New York, it may readily be seen that it would not require to take any steps whatever to provide any additional funds for 1915 other than the taxes payable to it, and for 1916 and 1917 and perhaps longer it would apparently be in a position to draw upon the City of New York from the money owing to it by the latter in the equity which would arise from an appraisal of property values which Rockaway City nor the property or the property owners within its proposed corporate limits ever paid a dollar to acquire.

It will thus be seen that New York City would not only be shorn, for revenue purposes and debt-incurring power, of the assessed valuation of all the taxable realty within the corporate limits of the new Rockaway City without any reduction in the debt of the City of New York, but it would likely have several million dollars more added to its present debt by reason of the provision in the Rockaway City Bill with respect to the so-called adjustment of the appraised value of all of the property now owned by the City—real and personal—no matter where situate; and as that balance or debt owing to Rockaway City would take effect on the day when Rockaway City would become a city it would consequently bear interest from such date until the different dates upon which portions of the debt would be liquidated.

LAND UNDER WATER.

The new Rockaway City would include all that territory within the County of Queens and the City of New York now known as Ward Five of the Borough of Queens, with the land under water and hassocks adjacent thereto. This is another dangerous provision in the bill. Vesting the new city with all right, title and interest to the land under water in Jamaica Bay would mean conflict between

it and the City of New York concerning the Jamaica Bay Improvement.

TAXES: PP. 155/156:

The bill provides that all taxes due and payable to the City of New York on May 1, 1915, from property and persons within the Fifth Ward, Borough of Queens, that is, within the territory to be excluded from the City by the proposed act, which remain unpaid on July 1, 1915, shall be thereafter collected by Rockaway City and paid by it as collected to the City of New York, and that all taxes due and payable after July 1, 1915, from property and persons within said territory shall be collected and retained by Rockaway City.

REMARKS RE TAXES: PP. 155/156:

This provision in the bill apparently means that the first half of the 1915 tax upon realty, which is payable on May 1st, shall all go to the City of New York, and all of the second half of such tax shall go to Rockaway City.

The very significant provision in the act which would create Rockaway City on July 1st, giving it sovereign municipal power from said date and with it the second half of the taxes levied by the City of New York for the year 1915, is bad. If any part of the City of New York is to be lopped off for the purpose of creating a new city, such dismemberment should never be made to take effect at any time except at the beginning of a new fiscal year. The City of New York is necessarily borrowing money in anticipation of the collection of its tax levy for the year 1915, and from the collection of these taxes the outstanding revenue obligations of the City, upon which it has been raising money to meet current budget expenses, must necessarily be redeemed. Yet the bill seeking to create the new city would take away from the City of New York one-half of the tax levy of the year 1915 which is now payable from property situate and from persons living within the Fifth Ward of the Borough of Queens.

PREFERENCE OF EMPLOYEES: P. 158:

Section 412, p. 158, of the Assembly Bill as amended provides that all officers, firemen, policemen and other employees of the City of New York now performing duties within the Fifth Ward of the

Borough of Queens, (which is to be lopped off from the City), shall have the preference over all others for the positions which they now hold, unless said positions are abolished by the Rockaway City Council. Nothing contained in the act, however, shall in any way affect their standing as employees of the City of New York if such officers, firemen, policemen and other employees of the City elect to retain their present positions with the City of New York.

The section referred to also contains the further provision that nothing therein contained shall be construed as preventing the officials of Rockaway City from abolishing any position or from the creation of new ones by dispensing with the services of any officer, fireman, policeman or other employee now performing services in said territory.

REMARKS *re* PREFERENCE OF EMPLOYEES:

This part of the proposed new city charter indicates that it would have the right to abolish any position which it pleased, and that the City of New York would be required to retain all employees who would elect to remain in their present positions with the City of New York, and also all employees whom the new Rockaway City did not wish to retain. In other words, the proposed act would not make it compulsory or incumbent upon Rockaway City to retain the present complement of officials, firemen, policemen or other employees performing duties within the Fifth Ward of the Borough of Queens, but it would be mandatory upon the City of New York to continue the employment of any such officers, firemen, policemen and other employees, among whom would probably be included school teachers, who should elect to retain their present positions with the City of New York.

The salary ratings, civil service requirements, etc., would all be in the hands of the Commission form of government of the new city, and as it would entirely rest with them as to what employees it should continue it is not very difficult to see that the large number, if not all, of these employees, including school teachers, would prefer to remain with the City of New York under salaries already fixed by law, and which in all likelihood are higher than the salaries which would be fixed by the new city officials to begin with.

This is a most unfair, inequitable, and iniquitous provision in the Bill, and with the other provisions referred to herein, emphasize the

necessity of every sentence of the new Bill being carefully and thoughtfully analyzed.

DIVISION OF UNAPPROPRIATED MONEYS BETWEEN
NEW YORK AND ROCKAWAY CITY:

The new Rockaway City bill provides that all unexpended moneys belonging to the City of New York, excepting moneys specifically appropriated, shall, within 90 days thereafter, be apportioned by the Board of Auditors between Rockaway City and the City of New York on a basis represented by the proportion of the valuation of the new Rockaway City and the City of New York.

REMARKS RE DIVISION OF UNAPPROPRIATED MONEYS BETWEEN
NEW YORK CITY AND ROCKAWAY CITY:

The bill is not very clear as to whether the valuation referred to here means the taxable real estate alone. If, however, the bill is to be looked upon seriously an amendment to it in this respect should be made, and it should be clearly shown that it would be upon the valuation of the real estate subject to taxation as ascertained from the latest assessment rolls of the City of New York made prior to the passage of the act; that is to say, upon the 1915 assessed valuation of taxable realty.

The clause with respect to unexpended moneys not specifically appropriated would likely cause a great deal of trouble and confusion. Such moneys are to be apportioned to the proposed Rockaway City and to be paid over to the Commissioners of Finance to the credit of the general fund of the proposed new city, and the amount apportioned to the City of New York is to be paid to the Comptroller.

There is seldom any money in the Treasury of the City of New York of which it can be freely said that it is not appropriated for some purpose. At the close of the year the balance remaining in the General Fund over and above the amount appropriated to meet the budget appropriations for said year would represent an amount not specifically appropriated. It might also be said that the balance in the Excise Fund likewise represented an amount not specifically appropriated, but all other moneys in the City Treasury are practically

appropriated for one purpose or another and yet an analysis to establish and prove what moneys were not specifically appropriated would likely be costly and cause trouble and confusion.

The foregoing memorandum does not profess to cover every bad clause in the bill or those which would prove unworkable. It has only dealt with some of its outstanding features. It will only require a careful reading by those familiar with governmental administration and the tax laws of the State to see the likely complications and litigious proceedings which would arise regarding tax liens; effects upon titles to property; State and County taxes, etc., if this Rockaway City Bill were enacted into law.



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